

**GENERAL ORDER FOR
LUCAS COUNTY ASBESTOS LITIGATION**

It appearing that there are certain actions pending in this Court in which plaintiffs claim damages for alleged exposure to asbestos or asbestos-containing products; that many of the defendants are the same in each case; that considerable discovery will be done by the parties in each case; and that other actions against many of the same defendants seeking damages for similar incidents will be filed.

The undersigned visiting judge assigned to the Court of Common Pleas for Lucas County, Ohio is of the opinion that extensive preparation will be necessary in each of these cases and that the orderly administration of justice and the interests of all parties in both time and economy demand that a plan for coordinated pretrial proceedings be implemented.

For the purpose of coordinating the pending and all future asbestos related litigation, it is hereby ORDERED, ADJUDGED, AND DECREED:

Trial dates and Due dates shall be governed by the Case Management Schedule and which is incorporated by reference and made a part of this Order.

A. GENERAL

1. The Clerk of this Court is directed to review complaints filed in civil actions in this Court from this date forward in order to make an initial determination of whether the complaint seeks recovery of damages for exposure to asbestos or asbestos-containing products and therefore whether the action should be included in these coordinated proceedings. Upon making an initial determination that an action should be included, the Clerk shall serve on

plaintiff's counsel an order indicating that the action will be included in these proceedings and incorporating this order by attachment. The complaint and all subsequent filings shall include the designation "Asbestos Litigation" in the heading.

2. Any such action which may hereinafter be instituted or conducted in the Lucas County Court of Common Pleas which is determined to be an "asbestos case" shall be made a part of these coordinated proceedings and shall be governed by the terms of this Order unless otherwise ordered.

3. All civil actions which allege claims for injury or death as a result of exposure to asbestos or asbestos-containing products now pending in the Lucas County Court of Common Pleas shall be governed to the extent feasible by the terms of this Order.

4. The purpose of this Order is to establish a uniform procedure for the conduct and coordination of orderly discovery, to uniformly and consistently resolve the common issues of law in such cases, to facilitate orderly pretrial proceedings and to dispose of the cases by avoiding duplication of effort and reducing the cost of such proceedings for all litigants.

5. If any matter arises in any case which is a part of these Coordinated Proceedings, which would result in a delay in the proceedings or in the taking or completion of discovery, or preparation for trial, or otherwise, the parties have the duty to present the issues to the Court for determination as soon as practicable after the matter arises.

B. ESTABLISHMENT OF MASTER ASBESTOS FILE

1. The Clerk of this Court is ordered to establish a master consolidated file for all asbestos cases which shall be designated "Master Asbestos File" for all orders, pleadings,

depositions, and filings common to all cases pending in this jurisdiction. All common documents filed in the consolidated Master Asbestos File shall bear the uniform designation “MAF”. The consolidated file shall be maintained as a central depository for all common material and will be available for all asbestos cases filed in this jurisdiction.

2. Any party may, and is encouraged to adopt by reference any pleading, brief, affidavit, deposition, or other document previously or simultaneously filed by any party in the consolidated master file.

C. CASE MANAGEMENT

1. Case Management Schedules

All cases filed in this court will be grouped according to plaintiffs’ firm and assigned dates significant for discovery events, motion practice, settlement discussions, preparation for trial and trial. Groups will be defined at the initial pretrial conference in a reasonable manner. Groups of cases and dates certain will be outlined in the Case Management Schedule.

2. Deferral/Dismissal

A deferral mechanism shall be applied to the failure of a plaintiff to meet certain discovery deadlines. If the plaintiff in a particular case fails to comply with this Order or the Specific Case Management Schedule, a notice entitled “Notice of Failure to Comply” shall be filed with the court by any defendant affected by such failure. The notice shall contain a brief statement of the facts and citation to authority is unnecessary. Plaintiff shall have twenty-eight (28) days after receipt of the notice to comply with the request. Unless the plaintiff can demonstrate that it has complied with the terms of this Order and the Specific Case Management

Schedule, or has shown good cause for failure to comply, plaintiff's case will be removed from its presently assigned group and placed in the next later group. If a plaintiff fails to meet discovery deadlines after he has been sanctioned by removal of his case to a later group, his case may be dismissed, with costs to plaintiff.

D. SERVICE OF COPIES OF PLEADINGS

1. In order to simplify and reduce the burden of service of pleadings and other papers, it is Ordered that a party serving a pleading, motion, discovery request or a response to any of them need serve that paper only upon the party to whom that pleading, motion, discovery request, response or other paper is directed. All other parties shall be informed that the paper was filed and served, and such other parties shall be entitled to receive a copy of the paper upon request at no cost.

2. All defendants have a right to receive plaintiff's complaint, plaintiff's responses to defendants' master set of discovery requests, expert reports, notices of hearings, notices of depositions, notices of failure to comply, and other notices required by the Rules. This Order shall not relieve plaintiffs of the duty to serve such papers on all defendants. Notwithstanding this Order, a party may serve a pleading or paper upon all other parties if it desires to do so.

3. A copy of each pleading shall be delivered to the Asbestos Clerk by the party filing said pleading.

4. In future cases, each defendant may file an answer in the Master Asbestos File captioned Asbestos Litigation, and thereafter, when served with a complaint, may file an answer which merely incorporates the answer in the Master Asbestos File.

E. MOTION DAY

Beginning in 1990, on the third Monday of every other month at 10:00 a.m., there shall be a Motion Day upon which will be heard all motions which are decisional and all notices of failure to comply filed within the preceding sixty (60) days. This being the case, the first Motion Day will take place May 21, 1990 at 10:00 a.m. Parties which do not have motions to be heard shall not be required to appear.

F. COMPLAINT AND ANSWER

1. Standard complaints for plaintiffs shall be filed with the Court's Master Asbestos File, Case No. _____, within thirty (30) days of the entry of this Order. The Standar Complaints shall bear the following number designations:

- 100 "Notice of Complaint and Jury Demand"
- 101 "Asbestos Master Complaint -- Living Plaintiff & Spouse"
- 102 "Asbestos Master Complaint -- Deceased Plaintiff"
- 103 "Premise Liability Count -- Living Plaintiff"
- 104 "Premise Liability Count -- Deceased Plaintiff"

Any asbestos case that is commenced hereafter may be commenced by filing and serving Pleading No. 100 and designating by number upon which Standard Complaint(S) the suit is based.

2. Standard Answers for each defendant shall be filed with the Court's Master Asbestos File, Case No.: _____, within thirty (30) days for the filing of plaintiffs' standard complaints, or within thirty (30) days of service of plaintiff's Notice of Complaint and

Jury Demand if a defendant is named for the first time in an asbestos case filed with this Court.

The Standard Answers shall bear the following number designations:

- 201 "Defendant's Standard Answer to Plaintiffs' Master Complaint --
Living Plaintiff and Spouse"
- 202 "Defendant's Standard Answer to Plaintiffs' Master Complaint --
Deceased Plaintiff"

Each defendant may answer within sixty (6) days of the filing of the Notice of Complaint and Jury Demand by filing in writing the number of the designated Standard Answer it is pleading.

G. AMENDED COMPLAINTS

Where a defendant has filed an answer to plaintiff's complaint, it is unnecessary for the defendant to file an answer to plaintiff's amended complaint. New allegations in the amended complaint shall be deemed denied.

H. MEDICAL AUTHORIZATIONS

1. Plaintiffs shall attach to their answers to Defendants' Standard Interrogatories a standard Release and Authorization to Inspect Medical Records signed by plaintiff. This standard release is attached hereto. A copy of this release shall serve as the original.

2. It is hereby ORDERED that every hospital, clinic, physician, or medical facility, which has been or which is hereafter presented with the standard medical release shall provide the requested records to Records Deposition Service or to the attorney who made the request. Reasonable charges, if any, for such services shall be paid by the requesting attorney.

I. INTERROGATORIES AND ANSWERS

Plaintiff's Interrogatories, Requests for Production of Documents and Request for Admission

1. Plaintiffs shall file with the Court's Master Asbestos File a joint set of interrogatories within 45 days after entry of this Order. Plaintiffs' counsel shall give notice of filing of these interrogatories to all defense counsel.
2. Each defendant shall file with the Court's Master Asbestos File one set of answers to plaintiffs' master set of interrogatories within thirty (3) days after receiving notice that plaintiffs have filed the same. Thereafter, defendants shall be obligated to update said answers as additional information becomes known to defendants.
3. Plaintiffs' Standardized Interrogatories and Requests for Production of Documents and Defendants' Answers shall be deemed binding in every case.

Defendants' Interrogatories and Request for Production

1. Defendants have previously filed with the Court three master sets of interrogatories, which shall continue to be utilized. These standardized interrogatories are designated Defendants' Standard Interrogatories and Requests for Production of Documents, one for the case of a living plaintiff, the second applicable in a death case, the third addressed to the representative of the estate of a decedent who has died after the Complaint was filed and the Complaint was amended to state a cause for wrongful death.
2. Within sixty (60) days after commencement of an asbestos action, plaintiff shall file and serve answers to and produce the documents called for by the Defendants' Standard Interrogatories and Requests for Production of Documents.

3. Supplemental Interrogatories may be served following the deposition of the plaintiff by any party as to matters and issues not covered by the master sets of interrogatories. This may be done without leave of Court so long as the supplemental set does not contain more than twenty (2) questions, including subparts. Otherwise, supplemental interrogatories may not be propounded without leave of Court.

4. Interrogatories shall be deemed continuing and each party shall remain obligated to supplement its responses whenever new information becomes available pursuant to Civ. R. 26(E).

J. PRELIMINARY BROCHURES AND FINAL BROCHURES

1. The elements of the Preliminary Brochures and Final Brochures (a/k/a Plaintiff's Work History and Product Identification) are intended to include reasonable notice to defendants of product identification information reasonably available to plaintiffs and/or their counsel. The Brochures shall have the same force and effect as the plaintiffs' sworn, signed answers to interrogatories, with the provision that the Brochures may be used for impeachment purposes against plaintiff only to the extent of information provided by plaintiff in said Brochures. To the extent reasonably available the elements shall include:

- a. The specific product name and manufacturer of products. Should this information not be available at the time of the Preliminary Brochure, then plaintiffs shall set forth the specific information upon which plaintiffs base the naming of each respective defendant.
- b. Name of employers.
- c. Specific location of job site where plaintiff worked and where said products were used or observed, including the name and address of

the job site.

- d. The dates plaintiff worked at said job site.
- e. The identification of all other insulation products which were used on the same job site and at the same time which may contain asbestos.
- f. The names, addresses and telephone numbers of witnesses whom plaintiffs believe have personal knowledge of the above information.
- g. The identity (by document number or otherwise) of any written documents supporting product identification.
- h. The names and addresses of all persons who worked with plaintiff at each job site.
- i. A brief synopsis of other evidence which plaintiffs claim establish product identification against a defendant, whether or not directed to a specific job site.

2. Except for good cause shown, plaintiffs shall be prohibited from introducing product identification evidence where same has not been disclosed in the Final Brochure.

- a. If a defendant conducts a deposition of a co-worker and during said deposition additional exposures of job sites are developed by a defendant, plaintiff may move to amend the Final Brochure to add the additional exposures or job sites developed by submitting a proposed order to amend stating specifically the information plaintiff requests be added to the Final Brochure. Defendant who objects to the proposed order shall file objections with the court and by brief or oral argument demonstrate to the court that good cause exists to not allow the amendment.
- b. If a defendant is not present at the deposition of the co-worker because the Final Brochure did not include evidence that said co-worker would identify said defendant's products or liability defendant's job site, then any information developed during the deposition regarding the said defendant cannot be used against said defendant at trial without another party of record obtaining an order from the court based upon a showing of good cause, permitting the same. This shall not be applicable to a co-worker's deposition taken before the Final Brochure is filed.

3. Whenever a defendant attends the deposition of a fact witness listed in plaintiffs' Final Brochure, because said Brochure indicated that witness would testify that plaintiff was exposed to that defendant's asbestos-containing product(s) or worked at a premises liability defendant's job site, and said witness during the course of the deposition is asked if he can identify that defendant's product(s) or job site, and exposure to plaintiff, as identified in plaintiffs' Final Brochure, and said witness states under oath that he cannot identify said defendant's product(s) or job site as specified in plaintiffs' Final Brochure and a time when plaintiff reasonably may have been exposed to that product or job site, said defendant may file a motion requesting costs for the time incurred in the preparation, travel to, and attendance at said deposition. Unless plaintiff is able to demonstrate to the court that a reasonable basis existed at the time of the filing of the Final Brochure upon which to believe said witness would identify said defendant's product(s) or job site and exposure to plaintiff, the court shall assess costs in an amount which the court deems to be reasonable and just under the circumstances. This provision shall not be applicable to a co-worker's deposition taken before the Final Brochure is filed.

4. A defendant may serve supplemental interrogatories regarding additional information in the Brochure.

5. The Brochures shall identify which witnesses plaintiffs reasonably believe can identify a defendant's product(s) although unable to place the product(s) on a job site at a particular time, if plaintiffs reasonably believe said witnesses will be able to testify that more likely than not a plaintiff was exposed to that defendant's product(s) during his working career.

6. Upon notice of and a showing by a particular defendant that plaintiff has failed to show exposure to that defendant's produce, plaintiff's case shall be dismissed without prejudice as to that defendant, but with costs to plaintiff. Such notice shall be heard on the motion day hereinbefore described.

K. REQUESTS FOR ADMISSIONS

1. A party may serve and file requests for admissions directed to any other party asking such other party to admit the truth of the matter asserted or the genuineness of any document.

2. Within sixty (60) days after service of such request, unless some other time is set by the court, each party shall file and serve a response to such request admitting, denying specifically, or denying on the basis of lack of knowledge or information, the truth of each statement set forth in such request.

L. DEPOSITIONS

Of Plaintiffs

1. Defendants may take the deposition(s) of the plaintiff(s) at any time after the Final Brochure, absent special circumstances meriting a deposition of the plaintiff(s) at an earlier date.

2. Defendants' deposition of the plaintiff(s) must be obtained prior to ninety (90) days preceding the date set for trial.

3. Unless otherwise ordered by the Court or stipulated to by all parties, before a plaintiff's De Bene Esse deposition is taken, plaintiff's attorney shall, at least fourteen (14) days

before the taking of the deposition:

- a. Unless otherwise excused by the Court for good cause, have answered the standard written interrogatories propounded by defendants.
- b. Unless otherwise excused for good cause, have provided defense counsel with a Preliminary Brochure identifying all employment, work sites and asbestos products to which plaintiff may testify.
- c. Unless otherwise excused for good cause, have provided medical releases and all discoverable medical records and reports in the possession of the plaintiffs' attorney to defense counsel.
- d. Unless otherwise ordered by the Court or stipulated to by all parties, before a plaintiff's De Bene Esse deposition is taken, defendants shall have reasonable opportunity to obtain a discovery deposition, if the same was not previously taken.

Of Expert Witnesses

1. Plaintiffs shall file no later than ninety (90) days before trial a report for each of plaintiffs' medical experts disclosing each expert's opinions and conclusion.
2. Defendants shall file no later than sixty (60) days before trial a report for each defense medical expert disclosing the expert's opinions and conclusions.

Lay Witnesses

1. All parties shall give at least fourteen (14) days prior notice in writing for depositions of litigants and lay witnesses.
2. After notice of deposition, parties shall give at least four (4) days notice of any substitution of a witness and/or the locations and/or cancellation of the deposition.

3. The plaintiffs shall, if in their possession or control, provide to the defendants a work history of each non-litigant witness testifying for the plaintiffs prior to the scheduled deposition.

4. At least four (4) days prior to the scheduled deposition, the plaintiffs shall notify the defendants, in writing, of the names of plaintiffs for whom each non-litigant witness will be called to testify.

5. Each plaintiff shall be limited to six (6) product identification witnesses in his case.

Videotape Trial Depositions

Notice of the videotape trial deposition of any witness shall be preceded by reasonable notice. Any opposite party shall have the right to take a discovery deposition or any such witness prior thereto; provided, however, unless specifically waived by the parties, there shall be a hiatus of a reasonable time between the discovery deposition and the noticed videotaped deposition.

All parties will attempt to cooperate in the scheduling of videotape trial depositions.

M. MEDICAL EXAMINATIONS

Medical examinations shall be conducted in accordance with the time outline in the Specific Case Management Schedule.

N. AUTOPSIES

In the event a plaintiff dies while his/her case is pending, each defendant shall have the

right to apply for leave to obtain an autopsy of the decedent at that defendant's expense.

If an autopsy of the decedent is not obtained, plaintiff shall be barred from introducing at trial evidence of the decedent's cause of death.

O. ORIGINAL X-RAYS

All parties are entitled to obtain original X-rays pursuant to order of this Court dated November 13, 1989, and attached hereto and incorporated by reference herein.

P. EXHIBIT AND WITNESS LISTS

Plaintiffs and defendants shall file with the Court's Master Asbestos File within sixty (6) days after entry of this Order Master Exhibit Lists and Master Witness Lists. Within the next succeeding thirty (3) days, plaintiffs and defendants shall file with the Court's Master Asbestos File standardized objections to opposing parties' Master Exhibit Lists and Master Witness Lists. As becomes necessary, parties may supplement such lists by filing a Final Witness List no later than sixty (6) days before trial without leave of court provided that notice is given to opposing parties. These standardized lists shall be deemed binding in every case.

O. INDIVIDUAL TRIALS

This General Order and the Case Management Schedules that will be entered are not Orders that cases be consolidated for trial. Cases will be tried individually, by order of case number, in each of the groups established by this General Order.

In the event a particular case within the group of (#) is settled or otherwise disposed of

within seven (7) days of the scheduled trial date, any party, so requesting will be granted a continuance of not more than one week in order to prepare for trial of the next case within the group.

Each case shall be bifurcated with the issues of product identification, medical causation and damages being tried first, and the issue of liability being tried second, if necessary. If the plaintiff has a claim for punitive damages, such claim will be tried separately as well.

R. FUTURE FILINGS

Any additional asbestos cases which are filed with this Court will be grouped and placed under specific Case Management Schedules. Nevertheless, the provisions of this General Order regarding the Master Asbestos File, service of pleadings, and case management shall apply to all such asbestos cases filed with this Court.

This Order supersedes the Pretrial Order of November 21, 1984.

Hon. Kenneth A. Rohrs
Lucas County Common Pleas Court by
Assignment